

ESTTA Tracking number: **ESTTA575055**

Filing date: **12/06/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057236
Party	Plaintiff Dogfish Head Marketing, LLC
Correspondence Address	JOHN J DABNEY MCDERMOTT WILL & EMERY LLP 500 NORTH CAPITOL STREET NW WASHINGTON, DC 20001 UNITED STATES jdabney@mwe.com, mhallerman@mwe.com, dciplit@mwe.com
Submission	Motion to Compel Discovery
Filer's Name	John J. Dabney
Filer's e-mail	jdabney@mwe.com, mhallerman@mwe.com, dciplit@mwe.com, kbukrinsky@mwe.com
Signature	/s/ John J. Dabney
Date	12/06/2013
Attachments	Motion to Compel.pdf(22531 bytes) Bukrinsky Decl.pdf(17591 bytes) Exhibit 1 Petitioner's Discovery Request.pdf(702667 bytes) Exhibit 2 Answers and Objections.pdf(542484 bytes) Exhibit 3 Statutory Objection.pdf(75021 bytes) Exhibit 4 Nov 18 email.pdf(43841 bytes) Exhibit 5 Dec 2 email.pdf(45345 bytes) Exhibit 6 Dec 5 email.pdf(46816 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DOGFISH HEAD MARKETING, LLC,)	
)	
Petitioner,)	Cancellation No. 92057236
)	
)	Registration No. 4,020,012
)	
v.)	Mark: ANALOG WINE CO.
)	
ANALOG WINE CO., LLC,)	
)	
Registrant.)	
)	

PETITIONER’S MOTION TO COMPEL DISCOVERY RESPONSES

Pursuant to 37 CFR § 2.120(e) and TBMP §§ 411.02, 523.01, and 523.02, Petitioner Dogfish Head Marketing, LLC, (“Petitioner”) moves to compel Registrant Analog Wine Co., LLC (“Registrant”) to respond to Petitioner’s Interrogatories, and produce documents as required by Petitioner’s Document Requests. Petitioner also requests that the Board reset the date for the close of discovery from the date of its Order. In support of this Motion, Petitioner submits the Declaration of Katie Bukrinsky and attached Exhibits.

BACKGROUND

Petitioner brought this action to cancel Registrant’s registration for ANALOG WINE CO on the grounds of abandonment, and priority and likelihood of confusion. (Dkt. No. 1.) Per the Board’s Scheduling Order (Dkt. No. 2), Petitioner and Registrant participated in a discovery conference and exchanged initial disclosures.

Petitioner served its first set of Requests for Production of Documents and First Set of Interrogatories on August 14, 2013. (*See* Declaration of Katie Bukrinsky (“Bukrinsky Decl.”) ¶

4 & Ex. 1 thereto.) Registrant responded to Petitioner's discovery requests on October 13, 2013. (*Id.* ¶¶ 5-6 & Exs. 2 & 3 thereto.)

In its Answers and Objections to Petitioner's First Set of Requests for Production of Documents, Registrant agreed to produce documents responsive to nearly every request. (*See* Bukrinsky Decl. ¶ 5 & Ex. 2 thereto.) To date, Registrant has not produced a single document. (*See* Bukrinsky Decl. ¶ 5.) In its response to Petitioner's Interrogatories, Registrant refused to answer any of the 11 interrogatories, asserting an objection pursuant to TBMP § 504.03(e) that Petitioner exceeded the permissible number of interrogatories. (*See* Bukrinsky Decl. ¶ 6 & Ex. 3 thereto.)

Petitioner contacted Registrant's counsel on November 18, 2013 to request a meet and confer on the outstanding responses to Petitioner's discovery requests. (Bukrinsky Decl. ¶ 7 & Ex. 4 thereto.) Registrant did not respond. (*See id.*) Petitioner again contacted Registrant's counsel on December 2, 2013 requesting an immediate response to schedule a meet and confer. (*Id.* ¶ 8 & Ex. 5 thereto.) Registrant again did not respond. (*See id.*) On December 5, 2013, Petitioner again contacted Registrant's counsel, notifying him of Petitioner's intent to file a Motion to Compel Discovery Responses. (*Id.* ¶ 9 & Ex. 6 thereto.) At the time of this filing, Registrant had not responded to any of Petitioner's attempts to resolve this discovery dispute, has not produced a single document, and has not served responses to the interrogatories. (*See id.*)

ARGUMENT

37 CFR § 2.120 states that a party may move for an order to compel discovery when the opposing party "fails to answer any question propounded in . . . any interrogatory, or fails to produce and permit the inspection and copying of an any document or thing." Registrant has unreasonably refused to respond to Petitioner's interrogatories, and has failed to produce any

documents in response to Petitioner's document requests, thus necessitating this motion . *See also* TBMP §§ 411.02, 523.01, and 523.02.

Petitioner has made a good faith effort to resolve these issues without the Board's intervention by repeatedly requesting a meet and confer conference to resolve Registrant's objection to Petitioner's interrogatories and to obtain documents responsive to Petitioner's document requests. (*See* Bukrinsky Decl. ¶¶ 7-9.) But Registrant's counsel has not responded to Petitioner's communications, has not produced any documents, and has not furnished answers to any of the interrogatories. (*See id.* ¶¶ 5, 7-9.)

Registrant has never provided a basis for its refusal to produce documents. Registrant's objection contained in its initial objection to Petitioner's First Set of Interrogatories that Petitioner has exceeded the permissible number of interrogatories is baseless. Petitioner has only propounded 11 interrogatories. To the extent that the Board believes that Petitioner has exceeded the permissible number, Petitioner withdraws Interrogatory No. 11, thus leaving no conceivable basis for an argument that Petitioner has exceeded the permissible number of interrogatories.

Petitioner respectfully asks the Board to grant its Motion, order Registrant to produce documents in response to Petitioner's document requests, and order Registrant to respond to Petitioner's interrogatories. Petitioner further requests that the Board reset the dates, including the date for the close discovery, from the date of its Order on this Motion, so that Petitioner may have the benefit of discovery.

DOGFISH HEAD MARKETING, LLC

Dated: December 6, 2013

By: /s/
John J. Dabney
Katie Bukrinsky
Mary D. Hallerman
McDermott Will & Emery LLP
500 North Capitol Street NW
Washington, D.C. 20001
Telephone: 202.756.8000
Facsimile: 202.756.8087

*Attorneys for Petitioner
Dogfish Head Marketing, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2013 , I served a true and correct copy of the foregoing MOTION TO COMPEL DISCOVERY RESPONSES AND BUKRINSKY DECLARATION via e-mail to counsel for Registrant pursuant to the parties' agreement:

**Matthew H. Swyers
The Trademark Company PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180
mswyers@TheTrademarkCompany.com**

/Katie Bukrinsky/

Katie Bukrinsky

Attorney for Petitioner

Dogfish Head Marketing, LLC

)	
DOGFISH HEAD MARKETING, LLC,)	
)	Cancellation No. 92057236
Petitioner,)	
)	Registration No. 4,020,012
)	
)	Mark: ANALOG WINE CO.
v.)	
)	
ANALOG WINE CO., LLC,)	
)	
Registrant.)	
)	

I, Katie Bukrinsky, do hereby declare as follows:

1. I am over twenty-one years of age and competent to make the following statements.
2. I am a member of the Virginia Bar and an associate in the law firm of McDermott Will & Emery LLP. I am an attorney for Petitioner Dogfish Head Marketing, LLC (“Petitioner”).
3. I have personal knowledge of the facts set forth in this Declaration and the authenticity of the documents attached herein and, if called to testify as a witness, I can and will testify to these facts in a court of law.
4. Exhibit 1 to my Declaration are true and correct copies of Petitioner’s First Set of Requests for Production of Documents and First Set of Interrogatories, served on Registrant Analog Wine Co., LLC (“Registrant”) on August 14, 2013.
5. Exhibit 2 to my Declaration is a true and correct copy of Registrant’s Answers & Objections to Petitioner’s First Set of Request for Production of Documents, served by Registrant on October 13, 2013. Although in its responses Registrant agrees to produce documents responsive to most of Petitioner’s requests, to date no documents have been produced.
6. Exhibit 3 to my Declaration is a true and correct copy of Registrant’s Statutory Objection to Petitioner’s First Set of Interrogatories.
7. On November 18, 2013, I contacted Registrant’s counsel by email to request a meet and confer conference on Registrant’s refusal to respond to Petitioner’s Interrogatories and

on Registrant's failure to produce documents. Exhibit 4 is a true and correct copy of that email. Registrant did not respond to this email.

8. On December 2, 2013, I again contacted Registrant's counsel to request a meet and confer conference, and asked for a response by Wednesday, December 4, 2013. Exhibit 5 is a true and correct copy of that email. Again, I received no response.

9. On December 5, 2013, I emailed Registrant's counsel to notify him of Petitioner's intention to file the accompanying Motion unless Registrant contacted Petitioner's counsel to resolve these discovery disputes. Exhibit 6 is a true and correct copy of that email. As of the time of this filing, Registrant has not responded.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: December 6, 2013

By: /Katie Bukrinsky/
Katie Bukrinsky
McDermott Will & Emery LLP
500 North Capitol Street, NW
Washington, D.C. 20001
Telephone: 202.756.8000
Facsimile: 202.756.8194

*Attorney for Petitioner
Dogfish Head Marketing, LLC*

EXHIBIT 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DOGFISH HEAD MARKETING, LLC,)	
)	
Petitioner,)	Cancellation No. 92057236
)	
)	Registration No. 4,020,012
)	
v.)	Mark: ANALOG WINE CO.
)	
ANALOG WINE CO., LLC,)	
)	
Registrant.)	
)	

**PETITIONER’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS
AND THINGS**

Pursuant to Fed. R. Civ. P. 34, Petitioner Dogfish Head Marketing, LLC (“Petitioner”) requests that Registrant Analog Wine Co., LLC (“Registrant”) produce all documents and things responsive to Petitioner’s First Set of Requests for Production of Documents and Things (“Requests”) within thirty (30) days of service of these Requests for inspection and copying at the law offices of McDermott Will & Emery LLP, 500 North Capitol Street, N.W., Washington, DC 20001, or at some other mutually agreeable location.

INSTRUCTIONS AND DEFINITIONS

A. “Registrant” means Registrant Analog Wine Co., LLC, the owner of U.S. Registration No. 4,020,012 for the mark ANALOG WINE CO., as well as its past or present owners, officers, directors, agents, servants, employees, in-house and outside attorneys, accountants, consultants, corporate parents, affiliates, subsidiaries, or other persons or entities acting on its behalf.

**PETITIONER’S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

B. “Registrant’s Mark” means the mark ANALOG, whether alone or in combination with any other term(s) and/or design(s), including ANALOG WINE CO. shown in U.S. Trademark Registration No. 4,020,012.

C. “Registrant’s Products” means alcohol beverages, including the products listed in U.S. Trademark Registration No. 4,020,012, namely, “wines” in Class 33.

D. “Petitioner” means Dogfish Head Marketing, LLC, the Petitioner in Cancellation Proceeding No. 92057236, and its owners, officers, directors, agents, servants, employees, in-house and outside attorneys, accountants, consultants, corporate parents, affiliates, subsidiaries, or other persons or entities acting on its behalf.

E. “Petitioner’s Marks” means the mark ANALOG whether alone or in combination with any other term(s) and/or design(s), including ANALOG BEER FOR THE DIGITAL AGE, shown in U.S. Registration No. 4,246,128.

F. “Petitioner’s Products” means all alcohol beverages, including beer.

G. “Document” is synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a). Drafts and non-identical duplicates constitute separate documents. Attachments, exhibits, appendices, schedules, and enclosures to documents are considered part of the same document.

H. “Thing” refers to any tangible object other than a document.

I. “Concerning” means constituting, comprising, relating to, referring to, reflecting, evidencing, or in any way relevant within the meaning of Federal Rule of Civil Procedure 26(b)(1).

J. “Including” means including but not limited to.

K. “Person” or “persons” means (a) natural persons; (b) legal entities, including, without limitation, corporations, partnerships, firms, associations, professional corporations, and proprietorships; and (c) governmental bodies or agencies.

L. “And” or “or” shall be construed conjunctively or disjunctively as necessary in order to make the request inclusive rather than exclusive.

**PETITIONER’S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

M. “U.S. Commerce” or “United State Commerce” means commerce which the United States may regulate.

N. The past tense includes the present tense, and vice-versa. The singular includes the plural, and vice-versa. The male pronoun includes the female pronoun, and vice-versa.

O. These requests seek the production of documents and things as of the date on which Registrant responds; however, these requests shall be deemed continuing and must be supplemented as required by the Federal Rules of Civil Procedure. If, after producing documents and things, Registrant becomes aware of any further document(s), thing(s), or information responsive to these Requests, Registrant is required to produce such additional documents, things, and/or information to Petitioner promptly upon acquiring possession of such.

P. If any document or thing is not produced based on a claim of privilege or Registrant contends a document or thing is otherwise excludable from discovery, Registrant shall provide Petitioner with a privilege log that conforms with Federal Rule of Civil Procedure 26(b)(5).

Q. If Registrant objects to any request as overly broad or unduly burdensome, Registrant shall produce those documents and/or things which are unobjectionable and specifically identify the respect in which the request is allegedly overly broad or burdensome, respectively.

REQUESTS FOR PRODUCTION

REQUEST NO. 1 All documents concerning the creation and design of Registrant’s Mark, including, without limitation, all marketing reports and all correspondence with any consultant, design firm, advertising agency, exhibitor, supplier, printer, and the like, regarding the creation or design of Registrant’s Mark.

REQUEST NO. 2 All documents that Registrant reviewed or consulted in connection with the adoption of Registrant’s Mark, including all documents concerning the reasons why

Registrant adopted Registrant's Mark, documents referring to any alternative marks that Registrant considered adopting in lieu of Registrant's Mark and all minutes and notes from any meetings or communications where any of the foregoing topics were discussed.

REQUEST NO. 3 All documents concerning any search or evaluation of any documents or records conducted by or on behalf of Registrant to determine whether any person had used or sought registration of any name or mark similar to Registrant's Mark, or whether the use or registration of Registrant's Mark might conflict with the rights of any person, including all trademark search reports and trademark use investigations.

REQUEST NO. 4 All wine labels used by Registrant bearing Registrant's Mark on Registrant's Products.

REQUEST NO. 5 All documents concerning the creation of any wine label bearing Registrant's Mark, including all communications with any design firm or advertising agency.

REQUEST NO. 6 Documents sufficient to identify each product offered or intended to be offered under Registrant's Mark.

REQUEST NO. 7 All documents concerning Registrant's first use of Registrant's Mark anywhere.

REQUEST NO. 8 All documents concerning Registrant's first use of Registrant's Mark in commerce.

REQUEST NO. 9 All documents and things concerning Registrant's first bona fide sale of wine under Registrant's Mark in United States commerce, including, without limitation,

documents sufficient to show the date of the first bona fide sale; all documents concerning the identity and geographic location of the first customer of Registrant's products, and all documents concerning any money or other remuneration received from the first such sale.

REQUEST NO. 10 All documents concerning the geographic scope of the advertising, distribution, and sale of products offered or intended to be offered under Registrant's Mark, including, without limitation, documents sufficient to show all geographical locations in the United States in which Registrant has advertised, distributed and sold Registrant's Products, or intends to advertise, distribute and sell Registrant's Products.

REQUEST NO. 11 All documents concerning the sale of Registrant's Products under Registrant's Mark, including all purchase orders and sales receipts and the like and all documents sent to or received from any person relating to the sale or potential sale of Registrant's Products under Registrant's Mark.

REQUEST NO. 12 All documents concerning the distribution of Registrant's Products under Registrant's Mark, including all documents sent to or received from distributors referring to the distribution of Registrant's Products under Registrant's Mark.

REQUEST NO. 13 All documents and things concerning the channels of trade through which Registrant sells, advertises or promotes its products, or through which Registrant intends to sell, advertise or promote its products and services, including, without limitation, identification of all retail stores, online retailers and other retail channels in which Registrant has sold or intends to sell products under Registrant's Mark.

REQUEST NO. 14 All documents concerning the advertising, promotion and marketing of Registrant's Products under Registrant's Mark in United States commerce.

REQUEST NO. 15 Documents sufficient to show the date on which Registrant started using Registrant's Mark for wine in U.S. commerce and the circumstances surrounding that use, including the first purchaser of Registrant's wine bearing Registrant's Mark.

REQUEST NO. 16 All documents concerning business plans for selling, distributing or advertising Registrant's Products bearing Registrant's Mark.

REQUEST NO. 17 Documents sufficient to show the amount of money that has been spent on advertising Registrant's Products bearing Registrant's Mark in the United States on an annual basis since Registrant first commenced such advertising.

REQUEST NO. 18 Documents sufficient to show the number of units sold of Registrant's Products bearing Registrant's Mark on a monthly basis since such sales commenced.

REQUEST NO. 19 Documents sufficient to show the number of units distributed of Registrant's Products bearing Registrant's Mark on a monthly basis since such distributions commenced.

REQUEST NO. 20 Documents sufficient to show the revenues received by Registrant on a monthly basis from the sales of Registrant's Products bearing Registrant's Mark commencing from Registrant's first sale of Registrant's Products under Registrant's Mark.

REQUEST NO. 21 All documents and things concerning the purchasers of Registrant's Products under Registrant's Mark, including, without limitation, all documents concerning the age, income level, educational level and gender of actual and potential purchasers of Registrant's Products under Registrant's Mark.

REQUEST NO. 22 All advertising and promotional materials and point-of-sale displays bearing Registrant's Mark, whether used or not, including, without limitation, all advertisements, catalogs, promotional materials, price sheets, press kits, Internet materials, and archived copies of internet web sites.

REQUEST NO. 23 All documents and things concerning Petitioner, Petitioner's Products, or Petitioner's Marks, including, without limitation, any document received from or sent to any person referring to Petitioner, Petitioner's Products, or Petitioner's Marks, and any notes, letters and correspondence referring to Petitioner, Petitioner's Products or Petitioner's Marks.

REQUEST NO. 24 All documents sent to and received from Petitioner and all notes concerning all such communications.

REQUEST NO. 25 All documents concerning the design and manufacturing of the label that Registrant submitted to the United States Patent and Trademark Office in connection with the application for Registrant's Mark, including all documents sent to or received from the designer of the label or the person who manufactured the labels.

REQUEST NO. 26 All documents concerning any investigation, trademark search, or other inquiry made by Registrant concerning Petitioner's trademark rights, including without

limitation, all documents referring or relating to the results of said investigation, trademark search or other inquiry.

REQUEST NO. 27 All documents and things concerning any similarity between Petitioner's Marks and Registrant's Mark, including, without limitation, all documents relating to any statement, comment or communication from any person regarding the similarity between Petitioner's Marks and Registrant's Mark.

REQUEST NO. 28 All documents and things concerning any instance in which any person was, or may have been confused, mistaken or deceived about the connection or relationship between Registrant, Registrant's Mark or Registrant's Products, on the one hand, and Petitioner, Petitioner's Marks or Petitioner's Products, on the other hand, including, without limitation, all documents concerning any communication regarding whether Registrant or Registrant's Products are associated, affiliated or connected with Petitioner, Petitioner's Products or Petitioner's Marks, whether Petitioner approved or sponsored Registrant's Products, whether Registrant is a distributor, affiliate, licensee or joint venturer of Petitioner or Petitioner's Products, or whether Registrant's Products originate from Petitioner.

REQUEST NO. 29 All documents concerning Registrant's registration and/or use of any domain name containing the word "ANALOG," alone or in combination with any other terms, numbers or letters, including print-outs showing any content that has ever appeared on such web sites.

REQUEST NO. 30 All documents concerning the creation and design of any label for Registrant's Products bearing Registrant's Mark.

**PETITIONER'S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

REQUEST NO. 31 All documents concerning the manufacturing and bottling of Registrant's Products sold or intended to be sold under Registrant's Mark, including all documents that you have sent to or received from any vineyard concerning Registrant's Products to be sold under Registrant's Mark.

REQUEST NO. 32 All documents concerning any key words or adwords or the like purchased by Registrant to advertise or promote Registrant's Products bearing Registrant's Mark.

REQUEST NO. 33 Documents sufficient to show all persons employed by Registrant and documents sufficient to describe their job duties and responsibilities.

REQUEST NO. 34 Documents sufficient to identify every person that has sold Registrant's Products bearing Registrant's Mark, including the name, address and telephone number of all retailers.

REQUEST NO. 35 Documents sufficient to show every vintage of wine on which Registrant's Mark was used.

REQUEST NO. 36 All documents concerning any government license or permit to sell Registrant's Products bearing Registrant's Mark in the United States, including all documents sent to and received from the Alcohol and Tobacco Tax and Trade Bureau ("TTB") and any state or federal regulatory or governmental body.

REQUEST NO. 37 All documents sent to or received from Salvestrin Wine Company concerning the manufacturing, bottling or distribution of Registrant's Products under Registrant's Mark.

**PETITIONER'S FIRST SET OF
REQUESTS FOR PRODUCTION
OF DOCUMENTS AND THINGS**

REQUEST NO. 38 All documents concerning Registrant's formation as a limited liability company and all documents sent to or received from the California Secretary of State referring to Registrant's formation or maintenance of its limited liability status.

REQUEST NO. 39 All documents and things concerning this Cancellation proceeding, including, without limitation, all documents that Registrant sent to any person regarding this Cancellation, including, without limitation, a representative, agent or attorney, and all documents that Registrant received from any person concerning this Cancellation, including, without limitation, a representative, agent or attorney.

REQUEST NO. 40 All documents concerning Registrant's challenge of or opposition to any person's use, attempted use or registration of a name or mark that Registrant claimed infringed or diluted, unfairly competed with or otherwise violated Registrant's Mark, including all cease and desist letters sent to any person and all responses to such cease and desist letters and any resulting settlement agreements.

REQUEST NO. 41 All documents concerning any person's challenge of or opposition to Registrant's use, attempted use or registration of Registrant's Mark, including all cease and desist letters that Registrant received and all responses to such cease and desist letters and any resulting settlement agreements.

REQUEST NO. 42 All agreements concerning Registrant's Mark, including all license agreements, consent agreements, co-existence agreements, distributor agreements, settlement agreements and all correspondence concerning any such agreements.

REQUEST NO. 43 All documents and things reviewed by or relied upon by any expert witnesses that Registrant may use in this Cancellation proceeding.

REQUEST NO. 44 All documents and things that Registrant intends to rely upon as evidence during trial of this Cancellation proceeding.

REQUEST NO. 45 All documents and things concerning any allegation in Petitioner's Petition for Cancellation, including all documents that support the denial of any allegation in Petitioner's Petition for Cancellation.

REQUEST NO. 46 All documents and things concerning the responses in Registrant's Answer to Petitioner's Petition for Cancellation.

REQUEST NO. 47 All documents and things showing or referencing use of a mark for an alcohol beverage that includes the word ANALOG, alone or in combination with any other term(s) or design(s), other than use by Petitioner and Registrant.

REQUEST NO. 48 All documents and things that Registrant was required to identify in, or which Registrant consulted, referred to or relied upon in preparing or developing its responses to Petitioner's First Set of Interrogatories.

DOGFISH HEAD MARKETING, LLC

Dated: August 14, 2013

By:

/John J. Dabney/

John J. Dabney

Mary D. Hallerman

McDermott Will & Emery LLP

500 North Capitol Street, NW

Washington, D.C. 20001

Telephone: 202.756.8000

Facsimile: 202.756.8087

*Attorneys for Petitioner
Dogfish Head Marketing, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2013, I served a true and correct copy of the foregoing Petitioner's First Set of Document Requests to Registrant via e-mail to counsel for Registrant pursuant to the parties' agreement at the following address:

**Matthew H. Swyers
The Trademark Company PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180
mswyers@TheTrademarkCompany.com**

/Mary D. Hallerman/

Mary D. Hallerman

Attorney for Petitioner

Dogfish Head Marketing, LLC

DOGFISH HEAD MARKETING, LLC,)	
)	
Petitioner,)	Cancellation No. 92057236
)	
)	Registration No. 4,020,012
)	
v.)	Mark: ANALOG WINE CO.
)	
ANALOG WINE CO., LLC,)	
)	
Registrant.)	
)	

Pursuant to Fed. R. Civ. P. 33, Petitioner Dogfish Head Marketing, LLC (“Petitioner”) requests that Registrant Analog Wine Co., LLC (“Registrant”) answer the following interrogatories fully, in writing and under oath, within thirty (30) days of service, and submit such answers to the law offices of McDermott Will & Emery LLP, 500 North Capitol Street NW, Washington, DC 20001.

A. “Registrant” means Registrant Analog Wine Co., LLC, the owner of U.S. Registration No. 4,020,012 for the mark ANALOG WINE CO., as well as its past or present owners, officers, directors, agents, servants, employees, in-house and outside attorneys, accountants, consultants, corporate parents, affiliates, subsidiaries, or other persons or entities acting on its behalf.

PETITIONER'S FIRST SET OF INTERROGATORIES

B. “Registrant’s Mark” means the mark ANALOG, whether alone or in combination with any other term(s) or design(s), including ANALOG WINE CO. shown in U.S. Trademark Registration No. 4,020,012.

C. “Registrant’s Products” means alcohol beverages, including the products listed in U.S. Trademark Registration No. 4,020,012, namely, “wines” in Class 33.

D. “Petitioner” means Dogfish Head Marketing, LLC, the Petitioner in Cancellation Proceeding No. 92057236, and all of its owners, officers, directors, agents, servants, employees, in-house and outside attorneys, accountants, consultants, corporate parents, affiliates, subsidiaries, or other persons or entities acting on its behalf.

E. “Petitioner’s Marks” means the mark ANALOG whether alone or in combination with any other term(s) and/or design(s), including ANALOG BEER FOR THE DIGITAL AGE, shown in U.S. Registration No. 4,246,128.

F. “Petitioner’s Products” means all alcohol beverages, including beer.

G. “Document” is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), except that “document” specifically includes, without limitation, any electronically stored data or information. Drafts and non-identical duplicates constitute separate documents. Attachments, exhibits, appendices, schedules, and enclosures to documents are considered part of the same document.

H. “Thing” refers to any tangible object other than a document.

I. “Concerning” means constituting, comprising, relating to, referring to, reflecting, evidencing, or in any way relevant within the meaning of Federal Rule of Civil Procedure 26(b)(1).

J. “Including” means including but not limited to.

K. “Person” or “persons” means (a) natural persons; (b) legal entities, including, without limitation, corporations, partnerships, firms, associations, professional corporations, and proprietorships; and (c) governmental bodies or agencies.

L. “And” or “or” shall be construed conjunctively or disjunctively as necessary in order to make the request inclusive rather than exclusive.

M. “U.S. Commerce” or “United State Commerce” means commerce which the United States may regulate.

N. The past tense includes the present tense, and vice-versa. The singular includes the plural, and vice-versa. The male pronoun includes the female pronoun, and vice-versa.

O. As used herein, the term “identify” means:

(1) In the case of a person, to state:

- a. full name;
- b. present or last known residence and business address and telephone numbers relating to each; and
- c. occupation and business position held.

(2) In the case of a company, to state:

- a. full name and legal form (*e.g.*, corporation, partnership, etc.) and where incorporated or formed, if applicable;
- b. the address and principal place of business; and
- c. the identity of the persons having knowledge of the matter with respect to which the company is identified.

(3) In the case of a document, to state:

- a. the identity of the persons who prepared it, the senders and recipients, if any;
 - b. the title or a description of the general nature of its subject matter;
 - c. the date and manner of distribution and publication, if any;
 - d. the location of each copy and the identity of the present custodian or persons responsible for its filing or other disposition; and
 - e. the identity of the persons who can authenticate or identify it.
- (4) In the case of an act, circumstance, event, or omission, to state:
- a. a complete description of the act, circumstance, event, or omission;
 - b. when and where it occurred;
 - c. the identity of the persons performing said act (or, in the case of an omission, the identity of the persons failing to act) or involved in said event;
 - d. the identity of all persons who have knowledge, information or belief about the act, circumstance, event or omission;
 - e. when the act, circumstance, event or omission first became known; and
 - f. the circumstances and manner in which such knowledge was first obtained.

P. These interrogatories seek responses as of the date on which Registrant responds; however, these interrogatories shall be deemed continuing and must be supplemented as required by the Federal Rules of Civil Procedure. If, after providing responses to these interrogatories, Registrant becomes aware of any further document(s), thing(s), or information responsive to

these interrogatories, Registrant is required to serve upon Petitioner such further responses promptly after Registrant has acquired additional documents, things, knowledge or information.

Q. Any information concerning any oral communication withheld in responding to these interrogatories on the ground of privilege is to be identified by the persons involved in the communication, including the name of the person who made the communication, the recipients of the communication, job titles of all persons involved, the date the communication occurred, the subject matter of the communication, and the nature of the privilege claimed.

R. If any interrogatory is objected to, in whole or in part, Registrant shall state with specificity the reasons for the objection.

S. Any document withheld in responding to these interrogatories on the ground of privilege is to be identified by authors, recipients, persons to whom copies were furnished, job titles of all of the foregoing, as well as the date and subject matter of each document, and the nature of the privilege claimed.

INTERROGATORIES

INTERROGATORY NO. 1 Identify and fully describe Registrant's first use of Registrant's Mark for Registrant's Products.

INTERROGATORY NO. 2 Identify and fully describe how Registrant first learned of Petitioner and Petitioner's Marks, including the persons who learned, when they learned, and how they learned.

INTERROGATORY NO. 3 Identify and fully describe all communications concerning Petitioner, Petitioner's Marks, or Petitioner's products or services.

INTERROGATORY NO. 4

For each of Registrant's Products bearing Registrant's Mark, state the number of units sold and the revenues received from the sale of such products on a monthly basis since sales commenced.

INTERROGATORY NO. 5

Identify and fully describe all communications that you have had with the Alcohol and Tobacco Tax and Trade Bureau (TTB) concerning Registrant's Products sold under Registrant's Mark and state all reasons why a Certificate of Label Approval (COLA) or label approval was never sought or obtained for Registrant's Products sold under Registrant's Mark.

INTERROGATORY NO. 6

Identify and fully describe each instance where Registrant or any person acting on Registrant's behalf has received any communication, written or oral, from any person which demonstrates, suggests or implies that that person or any other person believed or may have believed that Registrant, Registrant's Mark or Registrant's products or services were approved or sponsored by or connected, associated or affiliated in any way with Petitioner, Petitioner's Marks, or Petitioner's Products, including, without limitation, any instances where an inquiry was made by any person concerning whether Registrant's Products originate from Petitioner, or there is or may be a connection or some kind of business relationship between Registrant, Registrant's Mark or Registrant's Products, on the one hand, and Petitioner, Petitioner's Marks, or Petitioner's Products, on the other hand, and identify all documents and things relating thereto.

INTERROGATORY NO. 7

Identify and describe the places in which Registrant's Products under Registrant's Mark have been advertised or promoted, including each

publication and physical location where such advertising or promotion took place and the dates of such advertising and promotion.

INTERROGATORY NO. 8

Identify every person that purchased Registrant's Products bearing Registrant's Marks and identify the quantity that they purchased, the date of the purchases, and the amount of money that you received from the sale.

INTERROGATORY NO. 9

Identify every person who distributed or sold Registrant's Products under Registrant's Mark, including the number of units that each person distributed or sold and the dates on which the products were distributed or sold.

INTERROGATORY NO. 10

Identify all oral or written agreements concerning Registrant's Mark, including without limitation all licenses, assignments, co-existence agreements, partnership agreements, or joint venture agreements.

INTERROGATORY NO. 11

For each request for admission that you do not admit, state the factual basis for your denial and identify all documents that support your denial.

DOGFISH HEAD MARKETING, LLC

Dated: August 14, 2013

By: /s/
John J. Dabney
Mary D. Hallerman
McDermott Will & Emery LLP
500 North Capitol Street NW
Washington, D.C. 20001
Telephone: 202.756.8000
Facsimile: 202.756.8087

*Attorneys for Petitioner
Dogfish Head Marketing, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2013, I served a true and correct copy of the foregoing Petitioner's First Set of Interrogatories via e-mail to counsel for Registrant pursuant to the parties' agreement:

**Matthew H. Swyers
The Trademark Company PLLC
344 Maple Avenue West, Suite 151
Vienna, VA 22180
mswyers@TheTrademarkCompany.com**

/Mary D. Hallerman/
Mary D. Hallerman

*Attorney for Petitioner
Dogfish Head Marketing, LLC*

DM_US 44110912-1.088254.0118

EXHIBIT 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

Registration No. 4,020,012
For the mark ANALOG WINE CO.
Registered on the Principal Register August 30, 2011

DOGFISH HEAD MARKETING, LLC,

Petitioner,

vs.

ANALOG WINE CO., LLC,

Registrant.

Cancellation No. 92057236

REGISTRANT'S ANSWERS & OBJECTIONS TO
PETITIONER'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS

COMES NOW the Registrant, Analog Wine Co., LLC (hereinafter "Registrant"), and pursuant to the applicable rules of court provides the following answers and objections to Petitioner's First Set of Request for Production of Documents setting forth as follows:

REQUESTS

REQUEST NO. 1 All documents concerning the creation and design of Registrant's Mark, including, without limitation, all marketing reports and all correspondence with any consultant, design firm, advertising agency, exhibitor, supplier, printer, and the like, regarding the creation or design of Registrant's Mark.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 2 All documents that Registrant reviewed or consulted in connection with the adoption of Registrant's Mark, including all documents concerning the reasons why Registrant adopted Registrant's Mark, documents referring to any alternative marks that Registrant considered adopting in lieu of Registrant's Mark and all minutes and notes from any meetings or communications where any of the foregoing topics were discussed.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 3 All documents concerning any search or evaluation of any documents or records conducted by or on behalf of Registrant to determine whether any person had used or sought registration of any name or mark similar to Registrant's Mark, or whether the use or registration of Registrant's Mark might conflict with the rights of any person, including all trademark search reports and trademark use investigations.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 4 All wine labels used by Registrant bearing Registrant's Mark on Registrant's Products.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 5 All documents concerning the creation of any wine label bearing Registrant's Mark, including all communications with any design firm or advertising agency.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 6 Documents sufficient to identify each product offered or intended to be offered under Registrant's Mark.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 7 All documents concerning Registrant's first use of Registrant's Mark anywhere.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 8 All documents concerning Registrant's first use of Registrant's Mark in commerce.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and

burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 9 All documents and things concerning Registrant's first bona fide sale of wine under Registrant's Mark in United States commerce, including, without limitation, documents sufficient to show the date of the first bona fide sale; all documents concerning the identity and geographic location of the first customer of Registrant's products, and all documents concerning any money or other remuneration received from the first such sale.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and

burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 10 All documents concerning the geographic scope of the advertising, distribution, and sale of products offered or intended to be offered under Registrant's Mark, including, without limitation, documents sufficient to show all geographical locations in the United States in which Registrant has advertised, distributed and sold Registrant's Products, or intends to advertise, distribute and sell Registrant's Products.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and

burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 11 All documents concerning the sale of Registrant's Products under Registrant's Mark, including all purchase orders and sales receipts and the like and all documents sent to or received from any person relating to the sale or potential sale of Registrant's Products under Registrant's Mark.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and

burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 12 All documents concerning the distribution of Registrant's Products under Registrant's Mark, including all documents sent to or received from distributors referring to the distribution of Registrant's Products under Registrant's Mark.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and

burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 13 All documents and things concerning the channels of trade through which Registrant sells, advertises or promotes its products, or through which Registrant intends to sell, advertise or promote its products and services, including, without limitation, identification of all retail stores, online retailers and other retail channels in which Registrant has sold or intends to sell products under Registrant's Mark.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 14 All documents concerning the advertising, promotion and marketing of Registrant's Products under Registrant's Mark in United States commerce.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 15 Documents sufficient to show the date on which Registrant started using Registrant's Mark for wine in U.S. commerce and the circumstances surrounding that use, including the first purchaser of Registrant's wine bearing Registrant's Mark.

RESPONSE: Responsive documents will be supplemented.

REQUEST NO. 16 All documents concerning business plans for selling, distributing or advertising Registrant's Products bearing Registrant's Mark.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 17 Documents sufficient to show the amount of money that has been spent on advertising Registrant's Products bearing Registrant's Mark in the United States on an annual basis since Registrant first commenced such advertising.

RESPONSE: Responsive documents will be supplemented.

REQUEST NO. 18 Documents sufficient to show the number of units sold of Registrant's Products bearing Registrant's Mark on a monthly basis since such sales commenced.

RESPONSE: Responsive documents, if any, will be supplemented.

REQUEST NO. 19 Documents sufficient to show the number of units distributed of Registrant's Products bearing Registrant's Mark on a monthly basis since such distributions commenced.

RESPONSE: Responsive documents, if any, will be supplemented.

REQUEST NO. 20 Documents sufficient to show the revenues received by Registrant on a monthly basis from the sales of Registrant's Products bearing Registrant's Mark commencing from Registrant's first sale of Registrant's Products under Registrant's Mark.

RESPONSE: Responsive documents, if any, will be supplemented.

REQUEST NO. 21 All documents and things concerning the purchasers of Registrant's Products under Registrant's Mark, including, without limitation, all documents concerning the age, income level, educational level and gender of actual and potential purchasers of Registrant's Products under Registrant's Mark.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 22 All advertising and promotional materials and point-of-sale displays bearing Registrant's Mark, whether used or not, including, without limitation, all advertisements, catalogs, promotional materials, price sheets, press kits, Internet materials, and archived copies of Internet web sites.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 23 All documents and things concerning Petitioner, Petitioner's Products, or Petitioner's Marks, including, without limitation, any document received from or sent to any person referring to Petitioner, Petitioner's Products, and any notes, letters and correspondence referring to Petitioner, Petitioner's Products or Petitioner's Marks.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 24 All documents sent to and received from Petitioner and all notes concerning all such communications.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 25 All documents concerning the design and manufacturing of the label that Registrant submitted to the United States Patent and Trademark Office in connection with the application for Registrant's Mark, including all documents sent to or received from the designer of the label or the person who manufactured the labels.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 26 All documents concerning any investigation, trademark search, or other inquiry made by Registrant concerning Petitioner's trademark rights, including without limitation, all documents referring or relating to the results of said investigation, trademark search or other inquiry.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 27 All documents and things concerning any similarity between Petitioner's Marks and Registrant's Mark, including, without limitation, all documents relating to any statement, comment or communication from any person regarding the similarity between Petitioner's Marks and Registrant's Mark.

RESPONSE: None.

REQUEST NO. 28 All documents and things concerning any instance in which any person was, or may have been confused, mistaken or deceived about the connection or relationship between Registrant, Registrant's Mark or Registrant's Products, on the one hand, and Petitioner, Petitioner's Marks or Petitioner's Products, on the other hand, including, without limitation, all documents concerning any communication regarding whether Registrant or Registrant's Products are associated, affiliated or connected with Petitioner, Petitioner's Products or Petitioner's Marks, whether Petitioner approved or sponsored Registrant's Products, whether Registrant is a distributor, affiliate, licensee or joint venturer of Petitioner or Petitioner's Products, or whether Registrant's Products originate from Petitioner.

RESPONSE: None.

REQUEST NO. 29 All documents concerning Registrant's registration and/or use of any domain name containing the word "ANALOG," alone or in combination with any other terms, numbers or letters, including print-outs showing any content that has ever appeared on such web sites.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 30 All documents concerning the creation and design of any label for Registrant's Products bearing Registrant's Mark.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 31 All documents concerning the manufacturing and bottling of Registrant's Products sold or intended to be sold under Registrant's Mark, including all documents that you have sent to or received from any vineyard concerning Registrant's Products to be sold under Registrant's Mark.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 32 All documents concerning any key words or adwords or the like purchased by Registrant to advertise or promote Registrant's Products bearing Registrant's Mark.

RESPONSE: None.

REQUEST NO. 33 Documents sufficient to show all persons employed by Registrant and documents sufficient to describe their job duties and responsibilities.

RESPONSE: Responsive documents, if any, will be supplemented.

REQUEST NO. 34 Documents sufficient to identify every person that has sold Registrant's Products bearing Registrant's Mark, including the name, address and telephone number of all retailers.

RESPONSE: Responsive documents, if any, will be supplemented.

REQUEST NO. 35 Documents sufficient to show every vintage of wine on which Registrant's Mark was used.

RESPONSE: Responsive documents, if any, will be supplemented.

REQUEST NO. 36 All documents concerning any government license or permit to sell Registrant's Products bearing Registrant's Mark in the United States, including all documents sent to and received from the Alcohol and Tobacco Tax and Trade Bureau ("TTB") and any state or federal regulatory or governmental body.

RESPONSE: Responsive documents, if any, will be supplemented.

REQUEST NO. 37 All documents sent to or received from Salvestri n Wine Company concerning the manufacturing, bottling or distribution of Registrant's Products under Registrant's Mark.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 38 All documents concerning Registrant's formation as a limited liability company and all documents sent to or received from the California Secretary of State referring to Registrant's formation or maintenance of its limited liability status.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 39 All documents and things concerning this Cancellation proceeding, including, without limitation, all documents that Registrant sent to any person regarding this Cancellation, including, without limitation, a representative, agent or attorney, and all documents that Registrant received from any person concerning this Cancellation, including, without limitation, a representative, agent or attorney.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Moreover, it requests documents and things the production of which would violate the attorney-client privilege and/or are otherwise not reasonably calculated to lead to the discovery of admissible evidence at trial. Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 40 All documents concerning Registrant's challenge of or opposition to any person's use, attempted use or registration of a name or mark that Registrant claimed infringed or diluted, unfairly competed with or otherwise violated Registrant's Mark, including all cease and desist letters sent to any person and all responses to such cease and desist letters and any resulting settlement agreements.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 41 All documents concerning any person's challenge of or opposition to Registrant's use, attempted use or registration of Registrant's Mark, including all cease and desist letters that Registrant received and all responses to such cease and desist letters and any resulting settlement agreements.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 42 All agreements concerning Registrant's Mark, including all license agreements, consent agreements, co-existence agreements, distributor agreements, settlement agreements and all correspondence concerning any such agreements.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 43 All documents and things reviewed by or relied upon by any expert witnesses that Registrant may use in this Cancellation proceeding.

RESPONSE: None

REQUEST NO. 44 All documents and things that Registrant intends to rely upon as evidence during trial of this Cancellation proceeding.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 45 All documents and things concerning any allegation in Petitioner's Petition for Cancellation, including all documents that support the denial of any allegation in Petitioner's Petition for Cancellation.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 46 All documents and things concerning the responses in Registrant's Answer to Petitioner's Petition for Cancellation.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 47 All documents and things showing or referencing use of a mark for an alcohol beverage that includes the word ANALOG, alone or in combination with any other term(s) or design(s), other than use by Petitioner and Registrant.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

REQUEST NO. 48 All documents and things that Registrant was required to identify in, or which Registrant consulted, referred to or relied upon in preparing or developing its responses to Petitioner's First Set of Interrogatories.

RESPONSE: Registrant objects to the instant request on the grounds that it is overly broad and burdensome as to "all." Subject to said objection, responsive documents, if any, will be supplemented.

DATED this 13th day of October, 2013.
THE TRADEMARK COMPANY, PLLC

Matthew H. Swyers/
Matthew H. Swyers, Esquire
344 Maple Avenue West, Suite 151
Vienna, VA 22180
Telephone (800) 906-8626 x 100
Facsimile (270) 477-4574
mswyers@TheTrademarkCompany.com
Attorney for Registrant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

Registration No. 4,020,012
For the mark ANALOG WINE CO.
Registered on the Principal Register August 30, 2011

DOGFISH HEAD MARKETING, LLC,

Petitioner,

vs.

ANALOG WINE CO., LLC,

Registrant.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 13th day of October 2013

to be served, via first class mail, postage prepaid, upon:

JOHN J. DABNEY, ESQ.
MCDERMOTT WILL & EMERY LLP
500 NORTH CAPITOL STREET NW
WASHINGTON, DC 20001

/Matthew H. Swyers/
Matthew H. Swyers

EXHIBIT 3

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

Registration No. 4,020,012
For the mark ANALOG WINE CO.
Registered on the Principal Register August 30, 2011

DOGFISH HEAD MARKETING, LLC,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92057236
	:	
ANALOG WINE CO., LLC,	:	
	:	
Registrant.	:	

**REGISTRANT'S STATUTORY OBJECTION TO
PETITIONER'S FIRST SET OF INTERROGATORIES**

COMES NOW the Registrant, Analog Wine Co., LLC (hereinafter "Registrant"), and pursuant to the applicable rules of court provides the following statutory objection to the Petitioner's Interrogatories pursuant to TBMP § 405.03(e).

Specifically, Petitioner served eleven (11) numbered interrogatories on the Registrant. In conjunction with those interrogatories, however, Petitioner incorporated sub parts to interrogatory number 11 requesting that for any of the 191 requests for admission also served on Registrant not admitted Registrant explain, in full, the basis therefore.

Registrant denied 137 of Petitioner's specifically-worded requests for admission. In that regard, and based upon the nature of interrogatory number 11, the same now, as written incorporates 137 sub-parts rendering the Petitioner's interrogatories excessive in nature.

WHEREFORE Registrant submits the instant statutory objection to Petitioner's interrogatories pending the party's resolution of the same per the rules of Court.

DATED this 13th day of October, 2013.

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/

Matthew H. Swyers, Esquire

344 Maple Avenue West, Suite 151

Vienna, VA 22180

Telephone (800) 906-8626 x 100

Facsimile (270) 477-4574

mswyers@TheTrademarkCompany.com

Attorney for Registrant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board**

Registration No. 4,020,012
For the mark ANALOG WINE CO.
Registered on the Principal Register August 30, 2011

DOGFISH HEAD MARKETING, LLC,	:	
	:	
Petitioner,	:	
	:	
vs.	:	Cancellation No. 92057236
	:	
ANALOG WINE CO., LLC,	:	
	:	
Registrant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing this 13th day of October 2013
to be served, via first class mail, postage prepaid, upon:

JOHN J. DABNEY, ESQ.
MCDERMOTT WILL & EMERY LLP
500 NORTH CAPITOL STREET NW
WASHINGTON, DC 20001

/Matthew H. Swyers/
Matthew H. Swyers

EXHIBIT 4

From: Bukrinsky, Katie
To: ["mswyers@TheTrademarkCompany.com"](mailto:mswyers@TheTrademarkCompany.com)
Cc: Dabney, John; mhallerman@mwe.com
Subject: Dogfish Head Marketing v. Analog Wine Co
Date: Monday, November 18, 2013 5:09:47 PM

Matthew,

I am writing to follow up on Analog Wine's responses to Dogfish Head's discovery requests.

First, regarding Analog's responses to Dogfish Head's Requests for Production of Documents, you indicated that Analog would be producing documents responsive to 44 out of 48 requests (as to the remaining 4 requests, you indicated that "none" exist). Analog's responses were submitted on October 13 – over a month ago. To date, we have not received any documents. Please provide an update on when Analog will be producing documents.

Second, regarding Analog's responses to Dogfish Head's Interrogatories, you stated that Analog refuses to respond to these "pending the party's resolution" of Analog's statutory objection. Please advise whether you will be available this week for a meet and confer to resolve this matter.

Thank you,
Katie

Katie Bukrinsky
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street NW, Washington, DC 20001
Direct: 1 202-756-8194 Fax: 1 202-591-2733
kbukrinsky@mwe.com

EXHIBIT 5

From: Bukrinsky, Katie
To: ["mwyers@TheTrademarkCompany.com"](mailto:mwyers@TheTrademarkCompany.com)
Cc: [Dabney, John](#); mhallerman@mwe.com
Subject: RE: Dogfish Head Marketing v. Analog Wine Co
Date: Monday, December 02, 2013 9:32:02 AM

Good morning Matthew,

I have received no response to my request for a meet and confer, below, regarding Analog's failure to respond to DFH's discovery requests. Please contact me at your earliest convenience, by Wednesday of this week, to schedule a meet and confer.

Thank you,
Katie

Katie Bukrinsky
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street NW, Washington, DC 20001
Direct: 1 202-756-8194 Fax: 1 202-591-2733
kbukrinsky@mwe.com

From: Bukrinsky, Katie
Sent: Monday, November 18, 2013 5:10 PM
To: 'mwyers@TheTrademarkCompany.com'
Cc: Dabney, John; mhallerman@mwe.com
Subject: Dogfish Head Marketing v. Analog Wine Co

Matthew,

I am writing to follow up on Analog Wine's responses to Dogfish Head's discovery requests.

First, regarding Analog's responses to Dogfish Head's Requests for Production of Documents, you indicated that Analog would be producing documents responsive to 44 out of 48 requests (as to the remaining 4 requests, you indicated that "none" exist). Analog's responses were submitted on October 13 – over a month ago. To date, we have not received any documents. Please provide an update on when Analog will be producing documents.

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Thank you,
Katie

Katie Bukrinsky
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street NW, Washington, DC 20001
Direct: 1 202-756-8194 Fax: 1 202-591-2733
kbukrinsky@mwe.com

EXHIBIT 6

From: Bukrinsky, Katie
To: ["mswyers@TheTrademarkCompany.com"](mailto:mswyers@TheTrademarkCompany.com)
Cc: Dabney, John; mhallerman@mwe.com
Subject: RE: Dogfish Head Marketing v. Analog Wine Co
Date: Thursday, December 05, 2013 9:46:44 AM

Matthew,

We have not heard from you or your client regarding my email below. If we do not hear from you shortly, we will move forward with filing a motion to compel by the end of the week.

Thanks,
Katie

Katie Bukrinsky
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street NW, Washington, DC 20001
Direct: 1 202-756-8194 Fax: 1 202-591-2733
kbukrinsky@mwe.com

From: Bukrinsky, Katie
Sent: Monday, December 02, 2013 9:32 AM
To: 'mswyers@TheTrademarkCompany.com'
Cc: Dabney, John; mhallerman@mwe.com
Subject: RE: Dogfish Head Marketing v. Analog Wine Co

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Thank you,
Katie

Katie Bukrinsky
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street NW, Washington, DC 20001
Direct: 1 202-756-8194 Fax: 1 202-591-2733
kbukrinsky@mwe.com

From: Bukrinsky, Katie
Sent: Monday, November 18, 2013 5:10 PM
To: 'mswyers@TheTrademarkCompany.com'
Cc: Dabney, John; mhallerman@mwe.com
Subject: Dogfish Head Marketing v. Analog Wine Co

Matthew,

I am writing to follow up on Analog Wine's responses to Dogfish Head's discovery requests.

First, regarding Analog's responses to Dogfish Head's Requests for Production of Documents, you indicated that Analog would be producing documents responsive to 44 out of 48 requests (as to the remaining 4 requests, you indicated that "none" exist). Analog's responses were submitted on October 13 – over a month ago. To date, we have not received any documents. Please provide an update on when Analog will be producing documents.

Second, regarding Analog's responses to Dogfish Head's Interrogatories, you stated that Analog refuses to respond to these "pending the party's resolution" of Analog's statutory objection. Please advise whether you will be available this week for a meet and confer to resolve this matter.

Thank you,
Katie

Katie Bukrinsky
McDermott Will & Emery LLP
The McDermott Building
500 North Capitol Street NW, Washington, DC 20001
Direct: 1 202-756-8194 Fax: 1 202-591-2733
kbukrinsky@mwe.com